

Appl. No. 10/774,768  
Atty. Docket No. 9490  
Amdt. dated Oct. 12, 2005  
Reply to Office Action of July 12, 2005  
Customer No. 27752

### AMENDMENTS TO DRAWINGS

The attached replacement sheets of drawings include changes to Fig. 1a, Fig. 1b, Fig. 2b, and Fig. 2c. These sheets replace the original sheets including Fig. 1a, Fig. 1b, Fig. 2b, and Fig. 2c. In Figs. 1a and 1b, the legend "Prior Art" has been added. In Figs. 2b and 2c, a reference number has been added to identify the gap, item 210. Furthermore, in Fig. 2b, a reference number has been added to identify the stratum, item 250.

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### REMARKS

Claims 1-6 and 21-22 are pending in the present application. Claims 7-20 were withdrawn from consideration by the Office. Claims 1-6 and 21-22 were rejected by the Office.

Claim 1 has been amended to include the phrase "said sidewall comprising an ear or a panel." Support for this amendment may be found on page 6, lines 3-5 of the specification. Claim 1 has been amended to include the phrase "and wherein the absorbent article is a pull-on garment." Support for this amendment may be found on page 5, lines 23-24.

Claim 4 has been amended to include the phrase "comprising a stratum, wherein the flap forms a gap between the stratum and the chassis or sidewall." Support for the amendment is found at page 12, line 34 to page 13, line 12 of the specification.

These changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

### Objection to the Drawings

The Office objects to Figures 1a and 1b because "only that which is old is illustrated." Figures 1a and 1b have been amended to include the legend "Prior Art." The objection is believed to be moot.

### Rejection Under 35 USC §102

Claims 1-6 and 21 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0099353 to Olson (hereafter "Olson"). In support of this rejection, the Office states:

Olson discloses absorbent training pant 20 comprising: absorbent chassis 32; at least one side edge/sidewall 36 adjacently disposed to the chassis 32; and at least one side panel/flap handle 34 capable of positioning the training pant on a wearer disposed adjacent chassis 32 and sidewall 36. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim.

Applicant traverses this rejection.

Initially, it must be noted that the Office is attempting to assert that the side edge 36 of the chassis 32 as disclosed in Olson is equivalent to the sidewall 33 of the present

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application. While not specifically numerated, the pull-on of the present application clearly has a side edge in addition to the sidewall. As a result, the side edge of Olson can not reasonably be said to teach the sidewall of the present application. However, Claim 1 has been amended more clearly describe the sidewall.

Case law clearly states, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); *See also* MPEP § 2131. Claim 1, as amended, recites an absorbent article comprising a chassis; at least one sidewall adjacently disposed to the chassis; said sidewall comprising an ear or panel, and at least one handle. Olson discloses an absorbent chassis and side panels (Page 7, Paragraph 98); however, Olson does not disclose a handle. The Office must provide a reference that discloses a handle as well as the other limitations of Claim 1.

With regard to Claims 5 and 6, the Office states, "Olson further discloses each of the side panels/flaps can include one or more individual distinct pieces of material and therefore comprise unitary and multiple constructions." The teaching provided by Olson is directed to the side panels and not toward the handle which, in Claims 5 and 6, is a flap. The Office must provide a reference that discloses a handle as a flap as well as the other limitations of Claims 5 and 6. While the Office does not specifically address Claim 4, the argument for Claims 5 and 6 are believed to be equally applicable to Claim 4.

Claim 21 is dependent from Claim 1 and contains all the limitations thereof. In light of the arguments provided above, Olson does not teach all of the limitations of Claim 1 and, therefore, does not teach all of the limitations of Claim 21.

In light of the arguments presented above, Applicant requests the withdrawal of the rejection.

Claims 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,229,061 to Dragoo (hereafter "Dragoo"). In support of this rejection, the Office states, "Dragoo et al. discloses absorbent diaper/training pants 20 comprising containment assembly/chassis 32; at least one extensible side panel/side wall 30 adjacently disposed to the chassis; and at least one flap/handle 62 adjacent chassis 32 capable of assisting the wearer in application of the article 20." Applicant traverses the rejection.

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The teaching disclosed in Dragoo (Col. 8, line 66 – Col. 9, line 10) is directed toward the application of a traditional open or taped diaper. As disclosed in Dragoo, a first waist region of the diaper is placed under the wearer's back (typically when the wearer is in a supine position). A second waist region is positioned across the front of the wearer and the fastening members are engaged. However, the present application is directed to a pull-on garment. A pull-on garment is a type of absorbent article that is applied by being pulled onto the body of a wearer by inserting the wearer's legs into the leg openings and pulling the article up to a point of ideal fit. Applying a taped diaper does not teach applying a pull-on garment. Furthermore, given that the teaching cited by the Office from Dragoo is directed a taped diaper, Applicant fails to see how the ear flap 62 of Dragoo serves as a handle for a pull-on garment. Therefore, Dragoo fails to teach each and every limitation of Claim 1. Applicant requests the withdrawal of the rejection.

#### REJECTIONS UNDER 35 USC § 103(a)

Applicant respectfully submits that the Office has failed to make a *prima facie* case for the obviousness rejections presented below. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. See *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992); MPEP § 2143.01. Second, there must be a reasonable expectation of success. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143.02. Third, the prior art reference or combined references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. Furthermore, in establishing a *prima facie* case of obviousness, case law clearly places the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103." *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967). Applicant traverses this rejection.

Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson in further view of Dragoo. The Office concedes that Olson does not expressly disclose that the kit comprises more than one absorbent article or that the handle is readily accessible when positioned in the kit. The Office asserts:

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Dragoo et al. further discloses a plurality of disposable diapers 20 and inserts 10 packaged in the same package with an easy-opening device 225 on the package . . . . The Dragoo et al. handle 62 on diaper 20 is capable of being readily accessible from the kit because the packaging that forms the kit facilitates user gripping of the individual diaper 20 from the package.

The Office concludes that “[i]t would be obvious to one of ordinary skill in the art at the time the invention was made to modify Olson to contain the handle capable of being readily accessible and the multiple absorbent articles of Dragoo et al. since both references disclose absorbent article for transitioning an infant to toilet use with handles for article application.” Applicant traverses the rejection.

Initially, as presented above, Olson and Dragoo fail to teach each and every limitation present in Claim 1 from which Claim 22 is dependent. The combination of Olson and Dragoo proposed by the Office does not remedy the failings of the documents. Specifically, Olson and Dragoo, either singularly or in combination, fail to disclose a handle.

Second, the Office has failed to provide a motivation for the modification of Dragoo. The Office states, “The Dragoo et al. handle 62 on diaper 20 is capable of being readily accessible from the kit because the packaging that forms the kit facilitates user gripping of the individual diaper 20 from the package.” Applicant disputes this assertion by the Office. Applicant is unable to find support within Dragoo for the Office’s assertion of where the ear flap 62 is positioned within package 200. Furthermore, the Office’s modification of Dragoo such that the ear flap 62 is capable of being readily accessible from the kit suggests improper hindsight reconstruction on the part of the Office. The Office is asserting that the ear flap 62 of Dragoo is “capable of being readily accessible from the kit.” Since no direct teaching of this can be found, the Office is modifying the reference to teach Applicant’s limitation. The Office has provided no support for this modification to Dragoo. As a result, the Office appears to have engaged in improper hindsight reconstruction by attempting to impart upon Dragoo features that are neither taught or suggested.

Third, even assuming *arguendo* that the Office’s assertion that Olson and Dragoo contain a handle is correct, the Office has still failed in its *prima facie* case of obviousness. The Office has failed to teach each and every limitation present in Claim

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22. Specifically, the combination of Olson and Dragoo fails to teach or suggest the limitation where "the article is positioned within said kit such that the handle is readily accessible." The Office has provided no reason why the combination would yield a "kit such that the handle is readily accessible" as is recited in Claim 22. The Office's reasoning for the combination ("both references disclose absorbent articles for transitioning an infant to toilet use with handles for article application") does not address the limitation of the handle being readily accessible.

For the reason presented above, the Office has failed to present a *prima facie* case of obviousness with respect to Claim 22. Applicant requests withdrawal of the rejection.

#### CONCLUSION

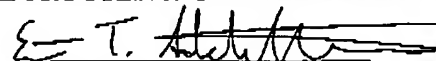
In light of the above amendments and remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-6, 21, and 22 is respectfully requested.

Respectfully submitted,

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By



Signature

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